



W.P. No. 14635 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2024

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 14635 of 2016

and

W.M.P. No. 12800 of 2016

K. Kaviyarasan

... Petitioner

-VS-

1. The Chairman,
Tamil Nadu Small Industries Development Corporation Limited,
Garment Complex – II,
Thiru Vi Ka Industrial Estate,
Guindy,
Chennai 600 032.

2. The Estate Manager,
Tamil Nadu Small Industries Development Corporation Limited,
Branch Office,
Administrative Office Block, Industrial Estate,
Ambattur,
Chennai 600 058.

3. A.K. Chendurpandian

4. K.Mani
General Secretary,
Labour Tenement Welfare Association,
Labour Tenement No.162,
Ambattur, Chennai 600 058.

... Respondents

(R4 impleaded as per order dated 18.08.2016
in W.M.P. No. 22838 of 2016 in W.P. No. 14635 of 2016)



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Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, calling for the records relating to the impugned order bearing RC.No.624/A7/2004 dated 07.03.2016 on the file of the Second Respondent and quash the same.

For Petitioner : Mr. U. Karunakaran

For Respondents : Ms. Sithara Sarangan (for R1 and R2)

Mr. T.Sundaravadanam (for R3 and R4)

ORDER

Heard Mr. U. Karunakaran, Learned Counsel for the Petitioner, Ms. Sithara Sarangan, Learned Counsel appearing for the First and Second Respondents and Mr. T.Sundaravadanam, Learned Counsel appearing for the Third and Fourth Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition challenges the Final Notice in Rc.No.624/A7/2004 dated 07.03.2016 sent by the Second Respondent to the Third Respondent, which reads as follows:-



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“In the reference tenth cited you were instructed to remove the unauthorized construction in the common area within 7 days from the date of issue of the first notice and also instructed to use the premises at Labour Tenement No.189 for residential purpose only and so far no action has been initiated from your side.

We therefore instruct you once again to remove the unauthorized construction in the common area within 7 days as a final chance from the date of issue of this notice and also instruct you to use the premises at Labour Tenement No.189 for residential purpose only failing which the unauthorized construction put up in the common area in labour tenement No.189 will be forcibly removed besides taking further legal actions as may be deemed appropriate.”

3. It is the case of the Petitioner that he is in actual occupation of the said part of the property for which notice has been issued to the Third Respondent, who has been allotted the same for residential purpose. Though this Court, by order dated 27.04.2016, had directed the First and Second Respondents to maintain *status quo* till 07.06.2016, by subsequent order passed in W.M.P.



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Nos. 26243 and 12800 of 2016 in W.P. No. 14635 of 2016 on 01.09.2016, it

has held as follows:-

“2. This Court in fact dictated the order on 31.08.2016, as the learned counsel for the petitioner was absent. Subsequently, a mention was made by the learned counsel by stating that due to inadvertence, he could not appear and stated that he had a good case on merits.

3. The photographs submitted before this Court show that the writ petitioner is running an 'Eating House' in the ground floor of the residential complex. That apart, the petitioner encroached into the common area, put up temporary shed, presumably for the purpose of providing seating arrangements for his customers.

4. The learned counsel for the petitioner submitted that though it is a residential complex, he is entitled to run a 'Mess' in it. However, so far as the temporary construction put up in the common area, there appears to be no effective defence. Therefore, if the petitioner is to be heard on merits, he has to first remove the temporary construction put up in the common area on or before 09.09.2016 and in the event



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the petitioner creates any problems and does not remove the structure, the officials of the SIDCO shall remove the structure and file the report before this Court on the next hearing date. It is made clear that SIDCO is entitled to seek Police Protection in this regard.”

This Court by the order dated 16.09.2016 has further held as follows:-

“ This Court, by order, dated 01.09.2016, imposed a condition on the writ petitioner that, if he wants the Writ Petition to be heard on merits, he has to first remove the temporary construction put up in the common area, on or before 09.09.2016. If the writ petitioner did not do so, SIDCO was empowered to remove it.

2. Mr.U.Karunakaran, the learned counsel appearing for the writ fourth respondent/writ petitioner states that, his client informed him over phone that, he removed the construction. Refuting the same, Mr.Abdul Saleem, the learned Standing Counsel for SIDCO submits that, it was actually SIDCO, which removed the construction, by employing their men and machinery, and not the writ petitioner.



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3. *Since contradictory statements are made, this Court, to find out the veracity of such statements, is of the view that, it would be appropriate to direct both the writ petitioner as well as SIDCO to file affidavit containing details as to what has happened in the matter, which shall be supported with photographs, based on which, this Court will decide as to what course of action is required to be taken to meet the ends of justice. Accordingly, the writ petitioner and SIDCO are directed to file affidavits to the said effect, on the next hearing date.”*

The removal of encroachment has been recorded in the order dated 07.10.2016, which reads as follows:-

“2. The Learned Standing Counsel appearing for the Tamil Nadu Small Industries Development Corporation Ltd., (SIDCO) has filed an action taken report, as directed by this Court, on 16.09.2016, along with the photographs, which shows that the entire encroachment has been removed. The same is placed on record and the authority concerned of SIDCO shall ensure that there is no encroachment permitted in the site in question.”



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WEB COPY The First and Second Respondents have also filed a status report dated 05.01.2014, confirming the said facts with photographs taken during the removal of encroachments.

4. When asked to make submissions on the merits of the matter, Learned Counsel for the Petitioner has not been able to show any infirmity in the impugned action.

5. The Petitioner admittedly was not an allottee of the land and does not have semblance of any legal right on that property. The nature of right claimed by the Third Respondent cannot inhibit the First and Second Respondents from carrying out its responsibilities to maintain the cleanliness of the entire industrial estate and the surrounding residential tenements to ensure proper security and enforce discipline amongst the habitants. Such *bonafide* action taken by the First and Second Respondents does not warrant any interference by this Court in the exercise of its discretionary powers of judicial review under Article 226 of the Constitution.



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In the result, the Writ Petition is dismissed with the aforesaid observations. Consequently, connected Miscellaneous Petition is closed. No costs.

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Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 01.04.2024.

gsa

To

1. The Chairman,
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Garment Complex – II,
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P.D. AUDIKESAVALU, J.

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